

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-PA-298
)	
New York Radio Service)	
WPTM988)	NAL/Acct. No. 200332400005
Brooklyn, New York)	FRN: 0005-1516-83

FORFEITURE ORDER

Adopted: June 16, 2004**Released: June 18, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to New York Radio Service (“NYRS”), licensee of private land mobile radio station WPTM988, for willful and repeated violation of Section 1.903(a) of the Commission’s Rules (“*Rules*”).¹ The noted violation involves NYRS’s operation of radio transmitting equipment at an unauthorized location.

2. On January 6, 2003, the District Director of the Commission’s Philadelphia, Pennsylvania, Field Office (“Philadelphia Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$4,000 to NYRS.² NYRS responded to the *NAL* on February 5, 2003.

II. BACKGROUND

3. On July 26, 2002, the Philadelphia Office received a complaint alleging that radio transmitting equipment was operating at the Parkview House, 700 Victory Boulevard, Staten Island, New York, without authorization from the Commission. On July 30 and 31, 2002, FCC agents from the Philadelphia Office and the Commission’s New York, New York, Field Office (“New York Office”) conducted an investigation into the complaint. Between 7:00 p.m. and 8:00 p.m. on July 30, 2002 and between 10:00 a.m. and 11:00 a.m. on July 31, 2002, the agents monitored radio communications on frequency 452.000 MHz and used direction-finding techniques to determine that the Parkview House was the source of the radio transmissions. The agents inspected a radio transmitter located on the 14th Floor of the Parkview House at approximately 3:45 p.m. on July 31, 2002. The transmitter was labeled with frequency 452.00 MHz and the call sign WPTM988. The agents verified that it operated on frequency 452.000 MHz. As of July 30 and 31, 2002, station WPTM988 was authorized to operate on frequency 452.00 MHz at 1633 Broadway, New York, New York, but was not authorized to operate at the Parkview House.

4. On January 6, 2003, the Philadelphia Office issued the subject *NAL* to NYRS finding that it willfully and repeatedly violated Section 1.903 of the Rules. In its response, NYRS seeks cancellation or reduction of the proposed monetary forfeiture. NYRS asserts that, through an inadvertent error, it relocated station WPTM988 to the Parkview House in mid-July 2002 prior to receiving conditional

¹ 47 C.F.R. § 1.903(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332400005 (Enf. Bur., Philadelphia Office, released January 6, 2003).

authority to operate at that location.³ In particular, NYRS asserts that it incorrectly believed its counsel had filed an application on its behalf to relocate WPTM988 to the Parkview House. Additionally, NYRS asserts that it remedied its unauthorized operation by filing an application to relocate WPTM988 to the Parkview House,⁴ and has now ceased operation at the Parkview House. Finally, NYRS argues that its violation is not as egregious as unlicensed “pirate” operation, that its unauthorized operation did not cause any harmful interference and that it has a history of overall compliance.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining NYRS’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services be used and operated with a valid authorization granted by the Commission. On July 30, 2002 and July 31, 2002, NYRS operated a radio transmitter at the Parkview House, 700 Victory Boulevard, Staten Island, New York, on frequency 452.000 MHz. The license for station WPTM988 authorized NYRS to operate a radio transmitter on the frequency 452.000 MHz at 1633 Broadway, New York, New York. Based on the facts before us, we find that NYRS repeatedly⁸ violated Section 1.903(a) of the Rules.

7. NYRS argues that its violation of Section 1.903(a) resulted from an inadvertent error. Although NYRS may not have intended to violate the rule by moving the station to the new location, we find that the move was a deliberate act. We therefore find that NYRS willfully violated Section 1.903(a) of the Rules.⁹

³ In certain circumstances, Section 90.159(b) of the Rules, 47 C.F.R. § 90.159(b), allows an applicant for modification of an existing land mobile radio station license to operate under the proposed modification during the pendency of the application.

⁴ The Commission’s records indicate that NYRS filed such an application on August 15, 2002. That application was dismissed on January 19, 2003.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ As provided by Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), a violation which occurs more than once is “repeated.” The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

8. NYRS also argues that we should consider the fact that, unlike the operation in *MariTEL Mississippi River, Inc.*,¹⁰ the unauthorized operation from the Parkview House did not cause any harmful interference. To take enforcement action on the basis of unauthorized operation, we need not establish that the unauthorized operation caused harmful interference.¹¹ We find that any lack of harmful interference resulting from NYRS's unauthorized operation does not warrant cancellation or reduction of the proposed forfeiture.

9. NYRS asserts that its operation is not as egregious as that of a "pirate" operator.¹² The Enforcement Bureau recognized this fact in setting the proposed forfeiture amount at \$4,000, which is the base forfeiture amount for operation at an unauthorized location, rather than at \$10,000, the base forfeiture amount for operation without an instrument of authority.¹³ Therefore, no reduction is warranted on the basis that NYRS's operation is not as egregious as that of a "pirate" operator.

10. No mitigation is warranted on the basis of NYRS's correction of the violation. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁴

11. We do, however, find that NYRS has a history of overall compliance and, accordingly, reduce the forfeiture amount to \$3,200.

12. We have examined NYRS's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that NYRS willfully and repeatedly violated Section 1.903(a) of the Rules and we find that, although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$3,200 is appropriate.

IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹⁵ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ New York Radio Service **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 1.903(a) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹⁰ 18 FCC Rcd 1481 (Enf. Bur. 2003).

¹¹ See, e.g., *Stephen Paul Dunifer*, 11 FCC Rcd 718, 726 (1995).

¹² The cases NYRS cites -- *WWC Licensee LLC*, 16 FCC Rcd 19490 (Enf. Bur. 2001), and *Falcon Radio, Inc.*, 16 FCC Rcd 14830 (Enf. Bur. 2001) -- support this position.

¹³ See note to 47 C.F.R. § 1.80(b)(4).

¹⁴ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.¹⁷ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332400005, and FRN 0005-1516-83. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

15. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to New York Radio Service and its counsel Elizabeth Sachs, Esq., Lukas, Nace, Gutierrez & Sachs, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.